IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 64 of 1992
with
CRIMINAL MISC.APPLICATION No 65 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

RAJNIBHAI V SHAH

Versus

BIPINCHANDRA M SHAH

Appearance:
MR DN TRIVEDI for Petitioners
MR SUNIL C PATEL for Respondent No. 1
MR AJ DESAI APP for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 25/08/2000

C.A.V. JUDGEMENT

Heard the learned counsel for the parties. These two petitions are filed by the same petitioners pursuant

to the two different complaints filed by the father and the son alleging the same set of facts. The allegations against the petitioners are that the petitioners have filed a false case of breach of trust and cheating in the Court of the learned Judicial Magistrate, First Class at Palanpur pursuant to which the complainant in one of the complaints was arrested and released on bail. According to the complaint, although no diamonds were purchased from the petitioners, they had obtained a bill and forged signature thereon and keeping such a forged document in their possession, committed the offences under Sections 463, 464, 467, 471, 474 and 114 of the Indian Penal Code. When the first complaint to this effect was filed by the son in the Court of the Judicial Magistrate, First Class at Surat on 3.10.1991, an order directing investigation by the police was made under Section 202 of the Cr.P.C. Thereafter, another complaint alleging the same offence and arraigning the same accused was filed by the father, and on 9.10.1991 an order to the police inspector to investigate the case under Section 156 (3) of the Cr.P.C. was obtained.

3. It is submitted by the learned advocate for the petitioners that both the aforesaid complaints were a counterblast to the complaint filed by the petitioner No.1 in the Court of the learned Judicial Magistrate, First Class at Palanpur pursuant to the alleged cheating committed by one of the original complainants. And as the complaint of the son only yielded an order of inquiry under Section 202 of the Cr.P.C. on 3.10.1991, another complaint on the same facts was filed by the father in which the order of investigation by the police was obtained on 9.10.1991. It is submitted that the real fact behind the complaint was that the complainant's son could not and did not want to return the amount given to him. It is submitted that the necessary ingredients of the offences alleged in the complaint are not disclosed. And it is vehemently argued that the bar of Section 195 against taking cognizance of the offences operated.

4. When it is alleged that a false or forged document is concocted and kept in possession, it becomes a matter of evidence and proof and a complaint reporting such offence cannot be thrown out at the threshold. However, the complaint about the same offences by the son as well as the father smacks of the abuse of the process of law. Otherwise, the main contention of the learned counsel for the petitioners is now squarely covered by the ratio of the judgment of the Hon'ble Supreme Court in SACHIDA NAND SINGH AND ANOTHER v. STATE OF BIHAR AND ANOTHER (AIR 1998 SC 1121) wherein it is held that the

bar contained in Sec.195 (1) (b) (ii) of the Cr.P.C. is not applicable to a case where forgery of a document was committed before the document was produced in a Court.

5. Thus, the bar of Section 195 does not operate in the facts of the present case and the complaints cannot be quashed on the ground that the Court could not have taken cognizance of the offences as alleged in the complaint. However, as seen earlier, the earlier complaint of the complainant's son is entertained and the Court has passed appropriate order under Section 202 of the Cr.P.C., and as such there is no reason why the second complaint by the father on the same facts should be proceeded further. It also appears to be a case where the necessary investigation can be carried out under the order made below the first complaint of the son and any investigation under the second order under the second complaint is not warranted. Under such circumstances, it would be proper and in the interest of justice that the second criminal complaint registered as Inquiry Case No.144 of 1999 be quashed and set aside.

6. In the facts and for the reasons discussed hereinabove, Misc. Cri. Application No.65 of 1992 is rejected and Rule is discharged. Misc. Cri. Application No.64 of 1992 is allowed and the criminal complaint registered as Inquiry Case No.144 of 1991 and the proceedings pursuant thereto are quashed and set aside. Rule in Misc. Cr. Application No.64 of 1992 is made absolute with no order as to costs.

Sd/-

(KMG Thilake)

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